

California Legislature

March 7, 2011

Mr. Charles Murray
California Citizens Compensation Commission
c/o Dept. of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento, CA 95814

Attn: Debbie Baldwin

Dear Chairman Murray:

We are writing in response to a request from Debbie Baldwin for clarification on when and how session per diem is paid.

Background. The California Constitution requires that a Member of the Legislature be a resident of his or her legislative district as a condition of election (subd. (c), Sec. 2, Art. IV, Cal. Const.). However, performance of the duties of the office requires the Member's presence at the State Capitol in Sacramento for the legislative session. Session per diem is designed to reasonably estimate the ongoing housing costs and other living expenses that must be incurred by a Member called upon to reside temporarily in Sacramento for purposes of legislative session business; and the per diem may be used by a Member to pay those extra expenses.

Legislative Session Days. The California Constitution authorizes per diem for the days during which the Legislature meets without a recess of more than three days (subd. (b), Sec. 4, Art. IV, Cal. Const.). Federal tax law treats per diem as a non-taxable reimbursement for days during which the Legislature meets without a recess of more than four days. In both instances, under the California Constitution and federal tax law, legislators are "deemed" to have expended living expenses equal to the per diem amount allowable to a federal employee while away from home. These provisions recognize the additional burden imposed on legislators who travel to the Capitol as well as the inconvenience of being away from their principal residence and family for a significant period of time. Many other state legislatures have adopted the federal per diem rate.

In 2009, the legislative session for the Assembly encompassed a period of 217 days, and for the Senate a period of 210 days; in 2010, the legislative session for



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the Assembly encompassed a period of 203 days and for the Senate a period of 206 days. The number of legislative session days varies from year to year depending on the legislative calendar for the year and whether any special sessions are called for periods outside the scheduled session days. Note that four Assembly Members and two Senators did not receive session per diem during the Regular Session of 2009-2010.

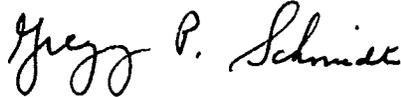
Payment of per diem. Members who elect to waive session per diem send a letter to the Chief Clerk of the Assembly or the Secretary of the Senate which is then published in the Assembly or Senate Journal. Members who have not waived per diem are listed on a weekly roll call sheet which is then used to generate payment of session per diem. Legislators excused from floor session due to either illness or legislative business conducted while away from Sacramento may continue to receive session per diem.

Non-session per diem. For travel away from the Member's tax home and outside Sacramento, per diem reimbursement is similar to that of state employees. A Member submits a travel reimbursement claim and upon approval it is sent to the State Controller for payment.

Sincerely,



JON WALDIE
Chief Administrative Officer
of the Assembly



GREGORY P. SCHMIDT
Secretary of the Senate